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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1541

BERNARD WEINSTOCK, DAVID FREEDMAN, BLANCHE CHAYET, LILLIAN R. GUSENOFF, HENRY CHASEN, DORIS LICHTENSTEIN, FRANK LICHTENSTEIN, DAVID J. SHAPIRO, HASKELL SHAPIRO and BEATRICE WHITE,
APPELLANTS,

v.

TOWN OF HULL, NAZZARENO DEVITO JR., DANIEL J. HENDERSON, STANLEY MACLEOD, STANLEY L. GOULD, and ROBERT L. MEADE, as they comprise the Board of Assessors of the Town of Hull, and WINIFRED H. KELLEY, as she is the Collector or Taxes of the Town of Hull,
APPELLEES.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF OF THE AMICUS CURIAE, THE ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, IN SUPPORT OF THE APPELLEES

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Interest of the Attorney General of the Commonwealth of Massachusetts

The Attorney General of the Commonwealth of Massachusetts (hereinafter "the Commonwealth") has appeared before the Superior Court and the Supreme Judicial Court of the Commonwealth, and has submitted briefs and ar-

gued orally in defense of Mass. Gen. Laws Ann. ch. 59, § 5, cl. 20 (1975), the statute herein challenged. He was entitled to so appear pursuant to the provisions of Mass. Gen. Laws Ann. ch. 231A, § 8 (1975), which states in pertinent part:

> "If a question of constitutionality is involved in any proceeding under this chapter [Massachusetts Declaratory Judgment Statute, Mass. Gen. Laws Ann. ch. 231A, §§ 1-9 (1975)], the attorney general shall also be notified of the proceeding and be entitled to be heard."

As the chief law officer of the Commonwealth, *see Secretary of Administration and Finance* v. *Attorney General,* Mass. Adv. Sh. (1975) 665, 676-678, the Attorney General wishes to continue full participation in this litigation.

Argument

Mass. Gen. Laws Ann. ch. 59, § 18 (1975) provides that various items of personal property shall be subject to taxation by the Commonwealth. However, Mass. Gen. Laws Ann. ch. 59, § 5, cl. 20 (1975) specifically exempts from such taxation certain items "used or commonly kept in or about the dwelling of which [an individual] is the owner of record . . . and which is the place of his domicile."

In identifying the personal property which shall be subject to taxation, Mass. Gen. Laws Ann. ch. 59, § 18 (1975), by definition, establishes a class of individuals who are subject to taxation. This class, composed of all individuals owning personal property located within the Commonwealth, is the relevant one for purposes of analyzing the appellants' equal protection claim. The appellants appear to contend that within this class, Mass. Gen. Laws Ann. ch. 59, § 5, cl. 20 (1975) discriminates between domiciliaries of the Commonwealth possessing only one home and

domiciliaries, such as the appellants, possessing a home additional to that which constitutes their place of domicile. Their contention is erroneous. Ownership of a second home is wholly extraneous to the terms of the statutory exemption. All domiciliaries of the Commonwealth, and specifically all of the appellants, derive the benefit of the exemption with respect to property located in their places of domicile, regardless of whether or not they own additional homes. Accordingly, for purposes of an equal protection analysis, the exemption creates no cognizable distinction between domiciliaries owning one home and those owning homes additional to their places of domicile.

In creating an exemption for property located within one's domicile, Mass. Gen. Laws Ann. ch. 59, § 5, cl. 20 (1975) does establish a distinction within the class identified by Mass. Gen. Laws Ann. ch. 59, § 18 (1975). That distinction, however, is one between domiciliaries of the Commonwealth, who enjoy the benefit of the exemption, and non-domiciliaries of the Commonwealth, who do not. Since the appellants do enjoy the benefit of the statutory exemption, they suffer no injury from such a distinction. They therefore possess no standing to challenge this classification. *See Sierra Club* v. *Morton,* 405 U.S. 727, 738-741 (1972).

Nevertheless, assuming for the sake of argument that the appellants were to possess the necessary standing to challenge the exemption on the ground that it discriminates against non-domiciliaries, the burden would be on the appellants "to negative every conceivable basis which might support" the exemption. *Madden* v. *Kentucky,* 309 U.S. 83, 88 (1940). The burden of establishing irrationality is especially acute in the context of taxation. In rejecting an equal protection challenge to an Illinois constitutional provision which subjected corporations and similar entities to *ad valorem* taxation, but excluded individuals from such taxation, this Court stated, "Where taxation is concerned

and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973) (footnote omitted).

The appellants have failed to discharge their burden of establishing the irrationality of MASS. GEN. LAWS ANN. ch. 59, § 5, cl. 20 (1975). There are many rational bases supporting the exemption created by the statute. For example, the legislators of the Commonwealth could properly have determined that personal property additional to that kept in one's place of domicile constitutes a luxury and is justly taxable, while property kept in one's place of domicile is not. As this basis alone satisfies the lenient test of rationality to which the challenged statute is subject, further enumeration of possible bases is unnecessary.

Conclusion

For the reasons stated above, the Attorney General of the Commonwealth of Massachusetts respectfully urges that the Court dismiss this appeal for want of a substantial federal question, or in the alternative, that it affirm the judgment of the Superior Court of the Commonwealth of Massachusetts.*

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June 27, 1975

* The assistance of Charles L. Barker of New York University School of Law is gratefully acknowledged.

Appendix of Statutes

MASS. GEN. LAWS ch. 59, § 5, cl. 20 (1975)

The wearing apparel, farming utensils and cash on hand of every person and the tools of his trade if a mechanic, to any amount; his household furniture and effects, including jewelry, plate, works of art, musical instruments, radios, television sets and garage or stable accessories, in storage in a public warehouse kept and maintained under chapter one hunded and five or used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, and which is the place of his domicile; and, to an amount not exceeding a total value of five thousand dollars, in respect to boats, fishing gear and nets owned and actually used by him in the prosecution of his business if engaged exclusively in commercial fishing; provided, that failure to comply with the provisions of sections twenty-nine and sixty-one relative to the filing of a list of his personal estate with the assessors shall not be a bar to an abatement of the tax, if any, imposed upon such personal estate.

MASS. GEN. LAWS ch. 59, § 18 (1975)

All taxable personal estate within or without the Commonwealth shall be assessed to the owner in the town where he is an inhabitant on January first, except as provided in chapter sixty-three and in the following clauses of this section:

First, All tangible personal property, including that of persons not inhabitants of the commonwealth, except ships and vessels used in or designed for use in carrying trade or commercial fishing, shall, unless exempted by section five, be taxed to the owner in the town where it is situated on January first.

Second, Machinery employed in any branch of manufacture or in supplying or distributing water, including ma-

chines used or operated under a stipulation providing for the payment of a royalty or compensation in the nature of a royalty for the privilege of using or operating the same, and all tangible personal property within the commonwealth leased for profit, or, in the case of domestic business and foreign corporations as defined in section thirty of chapter sixty-three, machinery used in the conduct of the business, shall be assessed where such machinery or tangible personal property is situated to the owner or any person having possession of the same on January first.

Third, Personal property of deceased persons, before the appointment of an executor or administrator, shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed as though assessed to him.

Fourth, Personal property of joint owners or tenants in common, other than partners, may be assessed to one or more of such owners, and any person so assessed shall be liable for the whole tax.

Fifth, Underground conduits, wires and pipes laid in public ways, except such as are owned by a street railway company, and poles, underground conduits and pipes, together with the wires thereon or therein, laid in or erected upon private property or in a railroad location by any corporation, except poles, underground conduits, wires and pipes of a railroad corporation laid in or erected upon the location of such railroad, and except poles, underground conduits, wires and pipes laid in or erected upon any right of way owned by a street railway company, shall be assessed to the owners thereof in the towns where laid or erected.

Sixth, Partners, whether residing in the same or different towns, shall be jointly taxed under their firm name, for all tangible personal property belonging to the partnership, except ships and vessels used in or designed for use in carrying trade or commercial fishing, in the place where such property is situated. Each partner shall be liable for the whole tax.

Seventh, Ships or vessels, other than yachts and other pleasure craft, owned by a partnership, shall be assessed to the several partners in their places of residence, if within the commonwealth, proportionally to their interests therein; but the interests of the several partners residing without the commonwealth shall be assessed to the partnership in the place where its business is carried on.